

PTO/GB/17 (10-07)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/06/2004.
Fees pursuant to the Consolidated Appropriations Act, 2008 (H.R. 4218).

FEE TRANSMITTAL

For FY 2008

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT		(\$) 65.00	Attorney Docket No.	65466CIP2(53472)
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METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 04-1105 Deposit Account Name: Edwards Angell Palmer & Dodge

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(a).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)

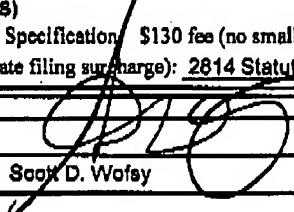
4. OTHER FEE(S)

Non-English Specification \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): 2814 Statutory Disclaimer

Fees Paid (\$)

65.00

SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	35,413
Name (Print/Type)	Scott D. Wofsy	Telephone	(203) 875-7505
		Date	October 23, 2007

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (571) 273-8300, on the date shown below.

Dated: October 23, 2007

Signature: Edith Sillman (Edith Sillman)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the Patent and Trademark Office, facsimile no. (671) 273-8300, on the date shown below.

Dated: October 23, 2007

Signature:

Edith Sillman
(Edith Sillman)Docket No.: 65468CIP2(53472)
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:
Michael J. Campbell et al.

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OCT 23 2007

Application No.: 10/776,923

Confirmation No.: 2359

Filed: February 11, 2004

Art Unit: 3767

For: PNEUMOSEAL TROCAR ARRANGEMENT

Examiner: L. C. Schell

TERMINAL DISCLAIMER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The undersigned is attorney of record for the assignee of the above-identified application. SurgiQuest, Inc. certifies that it is the owner of 100% interest in the above identified patent application, as evidenced by the attached assignment, said assignment having been recorded in the U.S. Patent and Trademark Office on May 2, 2006 at Reel 017555, Frame 0964.

The owner hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer,

of the following U.S. Patents:

U.S. Patent Number 7,182,752; and

U.S. Patent Number 7,285,112;

and of any patent granted on the following pending U.S. Patent Applications:

U.S. Patent Application Number 11/517,750, filed Sept. 8, 2006;

U.S. Patent Application Number 11/517,751, filed Sept. 8, 2006; and

U.S. Patent Application Number 11/517,929, filed Sept. 8, 2006.

238205

Application No.: 10/776,923

2

Docket No.: 65466CIP2(53472)

The owner hereby agrees that any patent that is granted on the above-identified application shall be enforceable only for and during such period that it and the above listed patents and applications are commonly owned. This agreement runs with any patent granted on the above-identified application and is binding upon the grantee, its successors or assignees.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the above-identified application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term.

Please charge our Deposit Account No. 04-1105 in the amount of \$65.00 covering the fee set forth in 37 CFR 1.20(d). The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 65466CIP2(53472). A duplicate copy of this paper is enclosed.

Dated: October 23, 2007

Respectfully submitted,

By 

Scott D. Wofsy

Registration No.: 35,413

EDWARDS ANGELL PALMER & DODGE
LLP

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Attorneys/Agents For Applicant

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ASSIGNMENT AND LICENSE AGREEMENT

THIS ASSIGNMENT AND LICENSE AGREEMENT ("*Agreement*"), dated as of April 14, 2006 ("*Effective Date*") by and between SurgiQuest, Inc., a Delaware corporation, with an address at 85 Lancelot Road, Fairfield, CT 06824 ("*SurgiQuest*") and IP Technologies, LLC, an Ohio limited liability company, with an address at 10534 Success Lane, Centerville, Ohio 45458 ("*IP Technologies*"). Each of SurgiQuest and IP Technologies is sometimes referred to individually herein as a "*Party*" and collectively as the "*Parties*."

WHEREAS, IP Technologies is the owner of or otherwise controls certain proprietary patents and patent applications; and

WHEREAS, IP Technologies desires to assign such proprietary patents and patent applications to SurgiQuest, and SurgiQuest desires to have IP Technologies assign such patents and patent applications to SurgiQuest so that SurgiQuest may develop and commercialize Products (as defined below) on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, the Parties hereto agree as follows:

1. DEFINITIONS

1.1 "*Affiliate*" means any individual, corporation, partnership or other entity that controls, is controlled by, or is under common control with, a Party to this Agreement. An individual, corporation, partnership or other entity shall be regarded as in control of another corporation, partnership or entity if it has the power to direct the management of any other person or if it owns, directly or indirectly, at least 50% of the voting or equity rights of the other corporation or entity.

1.2 "*Confidential Information*" means all information and materials received by either Party from the other Party prior to the date hereof or pursuant to this Agreement, whether in the form of tangible or electronic media, oral disclosures or otherwise, and all information and materials developed in the course of performing this Agreement, which are the Confidential Information of SurgiQuest.

1.3 "*Controlled*" means possession of the ability to grant the other Party access, a license or sublicense (as applicable) as provided for herein without violating the terms of any agreement or other arrangement with any Third Party existing at the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.4 "*Effective Date*" has the meaning set forth in the introductory paragraph of this Agreement.

1.5 "*First Commercial Sale*" of any Product means SurgiQuest's first sale for use or consumption by a Third Party of such Product in a country.

1.6 *"Funding"* means an equity investment, or investments, as the case may be, in SurgiQuest, by one or more investors, which equals or exceeds in the aggregate Three Million Dollars (\$3,000,000.00).

1.7 *"Improvement"* shall mean any modification (whenever developed) of a Product or of IP Technologies Intellectual Property, owned or controlled by IP Technologies or any Affiliate, use or sale of which in the United States of America without a license would infringe one or more of the Patent Rights.

1.8 *"IP Technologies Intellectual Property"* means Patent Rights and Know-How.

1.9 *"Know-How"* means all proprietary methods, devices, technology, trade secrets, inventions, compositions, designs, formulae, know-how, technical and training manuals and documentation and other information, including processes and analytical methodologies of IP Technologies, whenever discovered, created or developed, used in exploitation of the Patent Rights or the development, testing, analysis and manufacture of the Products or any ingredient thereof, and/or the formulation, development, registration, manufacture, packaging, labeling, import, export, receipt, shipment, storage or use, thereof.

1.10 *"MRP"* has the meaning set forth in Section 3.2(b).

1.11 *"MRP Commencement Date"* has the meaning set forth in Section 3.2(b).

1.12 *"Net Sales"* with respect to any Product means the gross amount invoiced by SurgiQuest and its Affiliates to unrelated Third Parties less: (a) trade, quantity and cash discounts, allowances, chargebacks and rebates actually allowed or given; (b) management fees or commissions actually paid to group purchasing organizations, brokers, distributors, dealers, sales representatives and agents; (c) the actual cost of Product samples provided without charge; (d) freight, shipping, insurance and other transportation expenses incurred in transporting such Product in final form to such customers; (e) credits or refunds actually allowed for rejections, defects or recalls of such Products, outdated or returned Products, or because of retroactive price reductions; (f) sales, value-added, excise taxes, tariffs and duties, and other taxes directly related to the sale (but not including taxes assessed against the income derived from such sale) of such Products; and (g) chargebacks granted to wholesalers in connection with such Products.

1.13 *"Party"* means SurgiQuest or IP Technologies, and *"Parties"* means SurgiQuest and IP Technologies together.

1.14 *"Patent Rights"* means the United States patents listed on Schedule A; the patent applications and the invention disclosures termed "patent applications in process" listed on Schedule A, and all United States patent applications claiming priority to such patent applications or derived from such disclosures (collectively the "Patent Applications"); all continuations, divisionals, and requests for continued examination of any of the foregoing Patent Applications; all United States patents which issue from any of the foregoing Patent Applications; all substitute patents, reissues, or re-examinations of all such Patent Applications and patents; all extensions of the term of all such patents; all claims of any continuation-in-part applications and patents directed to subject matter specifically described in any of the foregoing

Patent Applications; and all foreign patent applications, patents, and other intellectual property which claim priority to any of the foregoing United States patents and/or Patent Applications.

1.15 "*Payment Report*" has the meaning set forth in Section 3.4(a).

1.16 "*Product*" means any product that utilizes any of the Patent Rights in the SurgiQuest Field of Use.

1.17 "*Recipient*" has the meaning set forth in Section 5.3.

1.18 "*Royalties*" has the meaning set forth in Section 3.2 below.

1.19 "*SurgiQuest Field of Use*" means medical devices and materials used in surgery, and in particular, minimally invasive surgery products, laparoscopic procedures and equipment, surgical access devices, hand instruments and various applications thereof.

1.20 "*Territory*" means the entire world.

1.21 "*Third Party*" means any entity other than IP Technologies or SurgiQuest and their respective Affiliates.

1.22 "*Third Party Payments*" has the meaning set forth in Section 3.3.

1.23 "*Valid Claim*" shall mean a pending, issued or unexpired claim of the Patent Rights so long as such claim shall not have been irrevocably abandoned or held to be invalid in an unappealable decision of a court or other authority of competent jurisdiction.

2. GRANT OF RIGHTS

2.1 **Assignment to SurgiQuest.** IP Technologies hereby sells, assigns and transfers, to SurgiQuest, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the Patent Rights and all divisions, renewals and continuations thereof, and all Letters Patent of the United States which may be granted thereon and all reissues and extensions thereof, and all applications for Letters Patent which have been or may hereafter be filed claiming priority to the Patent in any country or countries foreign to the United States, and all Letters Patent which may be granted in any country or countries foreign to the United States and all extensions, renewals and reissues thereof, including the right to recover any and all damages for infringement of any of the foregoing that occurred on or prior to the Effective Date; and IP Technologies hereby authorizes and requests the Commissioner of Patents of the United States and any Official of any country or countries foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent to SurgiQuest, its successors, legal representatives and assigns, in accordance with the terms of this Agreement. IP Technologies covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreement in conflict herewith. IP Technologies further covenants and agrees that it will communicate to SurgiQuest, its successors, legal representatives and assigns, any facts known to, or coming known to, IP Technologies respecting the Patents Rights and to testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing and reissue applications, make

all rightful oaths and generally do everything possible for SurgiQuest, its successors, legal representatives and assigns to obtain and enforce proper patent protection for said improvements in all countries.

2.2 License of Know-How. IP Technologies hereby grants to SurgiQuest a worldwide, exclusive license, with the right to grant sublicenses, under the Know-How to develop, make, have made, use, sell, offer for sale, have sold, import and export Products. At such time as there no longer is a Valid Claim, the foregoing license to Know-How shall automatically convert to a paid-up, perpetual, exclusive license.

2.3 Improvements. IP Technologies shall notify SurgiQuest of any Improvement made within five years after the Effective Date. Any patent application or patent issuing from any such Improvement shall be automatically included in the Patent Rights.

3. PAYMENT OBLIGATIONS

3.1 Fee.

(a) In consideration of the grant of rights set forth in Sections 2.1 and 2.2 hereof, SurgiQuest hereby agrees to pay IP Technologies an upfront fee in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00); provided, however, that SurgiQuest shall not be required to make such payment unless and until it receives Funding.

(b) In further consideration of the grant of rights set forth in Sections 2.1 and 2.2 hereof, SurgiQuest hereby agrees to grant IP Technologies shares of common stock representing ten percent (10%) of the issued and outstanding equity of SurgiQuest prior to Funding.

3.2 Royalties. In further consideration of the grant of rights set forth in Sections 2.1 and 2.2 hereof, and subject to the other terms of this Agreement:

(a) Commencing on the date of the First Commercial Sale of each Product, SurgiQuest shall pay to IP Technologies royalties for the sale of any Product sold by SurgiQuest and/or its Affiliates to non-Affiliates in countries within the Territory in which there exists a Valid Claim and continuing until such time as there is no longer a Valid Claim covering the Product in such country, of three and one-half percent (3½%) of the Net Sales for such Product (the "*Royalties*").

(b) SurgiQuest shall pay annual Minimum Royalty Payments ("*MRP*") to IP Technologies commencing on the first day of the first calendar quarter commencing after the earlier to occur of (i) the first anniversary of the First Commercial Sale of any Product or (ii) the third anniversary of the Effective Date (such first to occur being the "*MRP Commencement Date*") and continuing as long as there is a Valid Claim covering a Product in a country where such Product is sold. MRP shall be payable per the following schedule.

During the first year following the MRP Commencement Date:	\$25,000
During the second year following the MRP Commencement Date:	\$50,000
During the third year following the MRP Commencement Date and thereafter:	\$100,000

All MRP paid by SurgiQuest shall be credited in full against any Royalties payable by SurgiQuest pursuant to Section 3.2(a) whenever such Royalties may be due.

3.3 Third Party Royalty Offset. In the event that in any royalty period, SurgiQuest, in order to exploit the Patent Rights granted to it under Section 2.1 of this Agreement in any country, actually makes royalty payments to one or more Third Parties ("*Third Party Payments*") as consideration for a license to an issued patent or patents, in the absence of which the Product could not, in the reasonable opinion of SurgiQuest, legally be used or sold in such country, then SurgiQuest shall have the right to reduce the Royalties otherwise due to IP Technologies pursuant to Section 3.2 above for such Product by fifty percent (50%) of such Third Party Payments. Notwithstanding the foregoing, in no event shall SurgiQuest be required to pay Third Party Payments and Royalties that in the aggregate equal or exceed seven percent (7%) of the Net Sales of any Product sold by SurgiQuest and/or its affiliates in the Territory. To the extent, that SurgiQuest would otherwise be required to pay amounts for Third Party Payments and Royalties that in the aggregate equal or exceed seven percent (7%) for any Product, SurgiQuest shall reduce any Royalty payments such that the aggregate of the Third Party Payments and Royalties does not exceed seven percent (7%).

3.4 Royalty Reports; Payments.

- (a) **Payment Report.** Within 60 calendar days after the first day of January, April, July and October of each year following the First Commercial Sale of a Product, SurgiQuest shall submit to IP Technologies a written report with respect to the preceding calendar quarter (the "*Payment Report*") stating: (i) the gross sales and Net Sales of Products sold by SurgiQuest and any Affiliate during such quarter; (ii) the date of First Commercial Sale of each Product in each country, (iii) the currency exchange rates used in determining the Royalties; and (iv) a calculation of the amounts due to IP Technologies, making reference to the specific deductions taken in accordance with the definition of Net Sales set forth in Section 1.12 hereof.
- (b) **Payments.** Simultaneously with the submission of each Payment Report, SurgiQuest shall pay to IP Technologies the Royalties due for the calendar quarter covered.

3.5 Currency. All Royalties shall be paid in immediately available United States funds to the bank account designated by IP Technologies. For purposes of computing the Royalty payment on sales of Products outside the United States, the Net Sales of such Products

shall be converted to United States dollars using the average closing buying rate for such currency quoted in the continental terms method of quoting exchange rates (local currency per one United States dollar) by the *Wall Street Journal*, on the last business day of each calendar quarter.

3.6 Withholding Taxes. SurgiQuest may deduct the amount of any taxes imposed on SurgiQuest that are required to be withheld or collected by SurgiQuest or its Affiliates under the laws of any country on amounts owing from SurgiQuest to IP Technologies hereunder to the extent SurgiQuest or its Affiliates pay such withholding taxes to the appropriate governmental authority on behalf of IP Technologies. If available, SurgiQuest shall promptly deliver to IP Technologies proof of payment of such taxes together with copies of all communications from or with such governmental authority with respect thereto.

3.7 Books and Records. SurgiQuest shall maintain full and true books of accounts and other records in sufficient detail so that the Royalties and other amounts payable to IP Technologies hereunder can be properly ascertained. Such books and records shall be maintained by SurgiQuest for a period of two (2) years from creation of individual records.

3.8 Audit Rights. Upon 20 business days' prior written notice, and no more frequently than once per year, SurgiQuest shall, at the request of IP Technologies, permit a nationally recognized independent certified public accountant selected by IP Technologies (except one to whom SurgiQuest has some reasonable objection) to have access during ordinary business hours, to such books and records as may be necessary to determine the correctness of any report or payment, including Royalties, made under this Agreement or to obtain information as to Royalties in case of failure to report or pay pursuant to the terms of this Agreement. IP Technologies shall be responsible for expenses for the independent certified public accountant initially selected by IP Technologies, except that SurgiQuest shall reimburse IP Technologies if the independent accountant determines the Royalties paid by SurgiQuest to IP Technologies are less than 90% of the Royalties actually owed to IP Technologies for the period reviewed by the independent accountant. The accounting firm shall disclose to IP Technologies only whether the Payment Reports are correct or not, and, if applicable, the specific details concerning any discrepancies. All inspections made by IP Technologies hereunder shall be made no later than one (1) year after the Payment Report that is the subject of the investigation was due.

4. PATENT RIGHTS

4.1 Patent Prosecution. From and after the date hereof, SurgiQuest shall be responsible for handling the filing, prosecution, procurement and maintenance of the Patent Rights assigned by IP Technologies to SurgiQuest hereunder, in SurgiQuest's discretion and at SurgiQuest's own expense. IP Technologies shall fully cooperate with SurgiQuest in the preparation, filing, prosecution, procurement and maintenance of the Patent Rights. In no event shall SurgiQuest have any liability if SurgiQuest elects, in the exercise of its commercially reasonable discretion, not to pursue or maintain any of the Patent Rights.

4.2 Enforcement of Patent Rights.

- (a) **Notice.** If IP Technologies has knowledge of any suspected infringement of any Patent Rights by Third Parties or of any misappropriation or misuse of any IP Technologies Intellectual Property, IP Technologies shall promptly inform SurgiQuest of such suspected infringement.
- (b) **Cooperation.** In any suit, action or proceeding referred to in this Article 4, IP Technologies shall, at its own expense, fully cooperate with SurgiQuest and supply all assistance reasonably requested by SurgiQuest, including providing SurgiQuest with such witnesses, documents and records and other evidence as may be reasonably requested.

5. CONFIDENTIALITY

5.1 Nondisclosure. During the term of this Agreement and after expiration or termination hereof, each Party will maintain all Confidential Information of the other Party in trust and confidence and will not disclose any Confidential Information to any Third Party or use any Confidential Information for any purpose except to practice the licenses granted hereunder or as expressly otherwise authorized by this Agreement. Each Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement. Each Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own, but in no event less than a reasonable degree of care, to ensure that its employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information.

5.2 Exceptions. Confidential Information shall not include any information that the receiving Party can prove by competent evidence:

- (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known or available;
- (b) is known by the receiving Party at the time of receiving such information, as evidenced by its records;
- (c) is hereafter furnished to the receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or
- (d) is independently developed by the receiving Party without the aid, application or use of Confidential Information.

5.3 Permitted Disclosures. The confidentiality obligations contained in Section 4.1 above shall not apply to the extent that any receiving Party (the "Recipient") reasonably determines it is required (a) to disclose information by law, order or regulation of a governmental agency or a court of competent jurisdiction, or (b) to disclose information to any governmental agency for purposes of obtaining approval to test, manufacture or market a product; *provided* in either case, that the Recipient shall give written notice thereof to the other Party and sufficient opportunity to prevent or limit to any such disclosure or to request confidential treatment thereof;

provided, that the Recipient shall give reasonable assistance to the disclosing Party to preserve the information as confidential. Furthermore, the confidentiality obligations contained in Section 4.1 above shall not apply to SurgiQuest's disclosure to potential or actual commercial, manufacturing or development collaborators.

5.4 Financial Terms and Program Results. Except as required by applicable law (including, but not limited to securities laws), the Parties agree that the material financial terms of this Agreement will be considered Confidential Information of both Parties. IP Technologies acknowledges that SurgiQuest may desire from time to time to seek additional funding and corporate partners. Accordingly and notwithstanding anything to the contrary contained in this Agreement, SurgiQuest shall have the right to disclose such material financial terms of this Agreement under confidentiality undertakings to any potential acquirer, merger partner or potential providers of financing and their advisors.

6. INDEMNITY

6.1 Indemnity. Except to the extent caused by IP Technologies' negligence or willful misconduct, SurgiQuest will indemnify and hold IP Technologies harmless from and against all liability, demands, damages, expenses and losses for death, personal injury, illness or property damage arising out of the use, sale, or other disposition of Products by SurgiQuest, its Affiliates or licensees.

6.2 Indemnification. Notice, Defense and Cooperation. In the event that IP Technologies is seeking indemnification under Section 6.1, IP Technologies shall inform SurgiQuest of the claim as soon as reasonably practicable after it receives notice thereof, and shall (a) permit SurgiQuest to assume direction and control of the defense of the claim (including the right to settle such claim at the discretion of SurgiQuest), and (b) cooperate as requested in the defense of such claim. In no event may IP Technologies incur any expense or compromise the defense of the claim without the written permission of SurgiQuest. If both Parties are sued and it is reasonably likely that the Parties may have conflicting interests or if it is otherwise not advisable under applicable legal and ethical requirements for the indemnifying Party's defense counsel to represent both Parties, separate independent counsel shall be retained for each Party.

7. REPRESENTATIONS AND WARRANTIES

7.1 IP Technologies' Representations and Warranties. IP Technologies represents and warrants to SurgiQuest that:

- (a) **Ownership of Intellectual Property.** IP Technologies owns or Controls, and has the right to assign and to license to SurgiQuest as provided herein (and will continue to have such rights during the duration of this Agreement), all of the IP Technologies Intellectual Property free and clear of all liens, encumbrances and contractual or other restrictions.
- (b) **All Patents and Patent Applications Included.** Each and every patent and patent application and all other intellectual property owned or Controlled, solely or

jointly, in whole or in part, by IP Technologies that is within or relates to the SurgiQuest Field of Use is included on Schedule A hereto.

- (c) **Inventors of Intellectual Property.** All Patent Rights name all inventors of the inventions claimed thereunder in accordance with applicable law, and no person other than any such inventor is so named. All such named inventors, including all employees or consultants to IP Technologies, have assigned their interests in such Patent Rights to IP Technologies. All employees and consultants of IP Technologies who, (a) either alone or in concert with others, developed, invented, discovered, derived or designed IP Technologies Intellectual Property, (b) have or had access to information disclosing IP Technologies Intellectual Property, or (c) conduct or conducted work pursuant to this Agreement, have entered into confidentiality, non-disclosure and assignment of invention agreements with IP Technologies, in forms reasonably acceptable to SurgiQuest.
- (d) **No Third Party Rights.** IP Technologies has not granted any right or license to any Third Party that would conflict with either or both of the assignment and license granted to SurgiQuest hereunder, including any rights of first or last refusal or other options to negotiate rights in the IP Technologies Intellectual Property.
- (e) **Litigation Concerning Intellectual Property.** There are no adverse proceedings, claims or actions pending or, to the best of IP Technologies' knowledge, threatened relating to the IP Technologies Intellectual Property, including any notices or claims asserting any invalidity or infringement, conflict or interference in respect of the practice or the proposed practice of such IP Technologies Intellectual Property, and at the time of disclosure or delivery thereof to SurgiQuest, IP Technologies shall have the full right and legal capacity to disclose and deliver such IP Technologies Intellectual Property for the uses granted hereunder without violating the rights of any Third Party.
- (f) **Authority.** This Agreement has been duly authorized, executed and delivered by IP Technologies and is a valid, binding, and legally enforceable obligation of IP Technologies, subject to applicable bankruptcy, insolvency, moratorium and other laws now or hereafter in effect affecting the rights of creditors generally and subject (as to the enforcement of remedies) to equitable principles.
- (g) **Execution.** The execution, delivery and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any statute, regulation or other law or agreement or instrument to which IP Technologies is a party or by which IP Technologies is bound, its corporate or academic charter documents or any order, rule or regulation of any court or governmental agency or body having jurisdiction of it or any of its properties.
- (h) **Consents.** No consent, approval, authorization or order of any court or governmental agency or body is required for the consummation and performance by IP Technologies of the transactions contemplated by this Agreement. The

assignment by IP Technologies hereunder does not violate any agreement or other obligations to Third Parties, and IP Technologies will not enter into any agreement or other obligation with any Third Party that would restrict its rights to assign the IP Technologies Intellectual Property. No party has any interest in the IP Technologies Intellectual Property.

7.2 SurgiQuest's Representations and Warranties. SurgiQuest represents and warrants to IP Technologies that:

- (a) **Authority.** This Agreement has been duly authorized, executed and delivered by SurgiQuest and is a valid, binding, and legally enforceable obligation of SurgiQuest, subject to applicable bankruptcy, insolvency, moratorium and other laws now or hereafter in effect affecting the rights of creditors generally and subject (as to the enforcement of remedies) to equitable principles.
- (b) **Execution.** The execution, delivery and performance of this Agreement will not result in a breach or violation of, or constitute a default under, any statute, regulation or other law or agreement or instrument to which SurgiQuest is a party or by which SurgiQuest is bound, its corporate charter documents or any order, rule or regulation of any court or governmental agency or body having jurisdiction of it or any of its properties.
- (c) **Consents.** No consent, approval, authorization or order of any court or governmental agency or body is required for the consummation by SurgiQuest of the transactions contemplated by this Agreement.

7.3 SurgiQuest's Covenant. SurgiQuest shall use its best efforts to obtain Funding within twelve months after the Effective Date.

7.4 IP Technologies' Covenant. IP Technologies shall cause any other inventions or discoveries (other than the IP Technologies Intellectual Property) of IP Technologies or any of its members or Affiliates within or related to the SurgiQuest Field of Use, whenever invented, discovered, created or developed to be assigned or exclusively licensed to SurgiQuest subject to the terms of this Agreement.

7.5 CREATE Act; Cooperative Effort. The Parties agree that, in the course of developing and commercializing the Patent Rights as set forth herein, it may be necessary or desirable for SurgiQuest to consult with IP Technologies personnel having knowledge and/or expertise with respect to the subject matter of the Patent Rights. Consultations between the Parties pursuant to this Section 7.5 may be directed to experimental, developmental and/or research work associated with the Patent Rights. The Parties agree that consultations between the parties related to experimental, developmental and/or research work shall constitute joint research activities jointly undertaken by SurgiQuest and IP Technologies pursuant to this Agreement. The Parties further agree that any invention made as a result of such joint research activities shall automatically be included in Patent Rights under this Agreement and an application for patent directed, in whole or in part, to such invention may disclose, or be

amended to disclose, the names of the Parties to this Agreement as required by 35 U.S.C. §103(c)(2)(C).

8. MISCELLANEOUS

8.1 Notices. All notices hereunder shall be in writing. All such notices may be given personally, by internationally recognized overnight courier using a delivery receipt of record or by facsimile transmission with confirmation of receipt. All such notices shall be deemed to be received as follows: (a) if delivered personally, when received; (b) if sent by overnight courier, when signed for; and (c) if sent by facsimile, when the telefax has been transmitted over the telephone lines, as evidenced by a facsimile confirmation report generated by the transmitting machine. Notices shall be addressed as follows:

For IP Technologies: IP Technologies, LLC
10534 Success Lane
Centerville, Ohio 45458
Facsimile:
Attn: Jack Stubbs

For SurgiQuest: SurgiQuest, Inc.
85 Lancelot Road
Fairfield, CT 06874
Facsimile:
Attn: Kourosh Azarbarzin

with a copy to: Wiggin and Dana LLP
One Century Tower
New Haven, CT 06508-1832
Facsimile: 203.782.2889
Attn: Merton G. Gollaher

8.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Connecticut, without giving effect to the choice of law provisions thereof. The Parties hereby irrevocably submit exclusively to the personal jurisdiction and venue of the courts of the state of Connecticut, over any suit, action or proceeding arising out of or relating to this Agreement.

8.3 No Consequential Damages. IN NO EVENT SHALL EITHER IP TECHNOLOGIES OR SURGIQUEST OR THEIR AFFILIATES BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST REVENUES OR PROFITS), WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY. Neither Party has any obligation to maximize the other's revenues or profits in connection with this Agreement. Without limiting the foregoing, it is expressly agreed that such limitation applies in the event the IP Technologies Intellectual Property is insufficient to result in profits for SurgiQuest, or in the event SurgiQuest fails diligently to develop or commercialize any Products.

8.4 Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any of its obligations under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including from fire, floods, embargoes, war, acts of war (whether war be declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of nature or acts, omissions or delays in acting by any governmental authority or the other Party; provided, that the affected Party uses reasonable efforts to prevent and mitigate the effect of any such cause.

8.5 Assignment. Neither this Agreement nor any right or obligation hereunder may be assigned, delegated or otherwise transferred, in whole or part, by either Party without the prior express written consent of the other; provided, however, that SurgiQuest may, without the written consent of IP Technologies, assign this Assignment and its rights and delegate its obligations hereunder to its Affiliates, or in connection with the transfer or sale of all or substantially all of such Party's assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 9.5 shall be void. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties.

8.6 Entire Agreement. This Agreement, including the Schedule attached hereto, contains the entire understanding of the Parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, heretofore made are expressly terminated and superseded by this Agreement. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both Parties hereto.

8.7 Severability. Both Parties hereby expressly agree and contract that it is the intention of neither Party to violate any public policy, statutory or common laws, rules, regulations, treaty or decision of any government agency or executive body thereof of any country or community or association of countries. Accordingly, if any word, sentence, paragraph, clause or combination thereof of this Agreement is found, by a court or executive body with judicial powers having jurisdiction over this Agreement or either of the Parties hereto, in a final unappealable order, to be in violation of any such provisions in any country or community or association of countries, (a) such words, sentences, paragraphs, clauses or combination shall be inoperative in such country or community or association of countries and the remainder of this Agreement shall remain binding upon the Parties hereto; and (b) the Parties covenant and agree to renegotiate any such words, sentences, paragraphs, clauses or combination thereof that is inoperative, it being the intent that the basic purposes of this Agreement are to be effectuated.

8.8 Independent Contractors. It is expressly agreed that IP Technologies and SurgiQuest shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency. Neither IP Technologies nor SurgiQuest shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior written authorization of the other Party to do so.

8.9 Waiver. The waiver by either Party hereto of any right hereunder or the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

8.10 Interpretation. The paragraph and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. All references in this Agreement to an Article, Section, Exhibit or Schedule shall refer to an Article, Section, Exhibit or Schedule in or to this Agreement, unless otherwise stated. Any reference to any federal, national, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" and similar words shall mean including without limitation. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. References in this Agreement to "provisions of this Agreement" refer to the terms, conditions and promises contained in this Agreement taken as a whole. All references to days, months, quarters or years are references to business days, calendar months, calendar quarters, or calendar years, unless otherwise stated. References to the singular include the plural.

8.11 Performance by Affiliates. The Parties recognize that each of them may carry out certain obligations under this Agreement through performance by Affiliates, and that the assignment and license rights granted herein apply to Affiliates as well as to the Parties. Each of the Parties hereby guarantees that the activities of its Affiliates under this Agreement shall comply with this Agreement, and such Party remains primarily liable under this Agreement for all of its obligations hereunder notwithstanding any assignment to an Affiliate or performance or attempted performance of the Party's obligations by an Affiliate.

8.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.13 Consulting Agreement. The Parties agree that, upon Funding, SurgiQuest will enter into a consulting agreement with Jack Stubbs, Chief Executive Officer of IP Technologies, upon terms and conditions reasonably acceptable to the Parties.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of this Agreement.

SURGIQUEST, INC.

By 

Title President & CEO

IP TECHNOLOGIES, LLC

By _____

Title _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of this Agreement.

SURGIQUEST, INC.

By _____

Title _____

IP TECHNOLOGIES, LLC

By James B. Stubbs
3/14/06

Title Chief Executive Officer / President

IP TECHNOLOGIES, LLC

By Edward J. THOMASON MD

3/14/2006

Title _____

SCHEDULE A

1. US Patent – 6,030,402
Apparatus and Methods for Penetration of Tissue and the Creation of an opening therein
Filed: April 23, 1993
Issued: February 29, 2000
2. US Patent – 6,056,766
Stabilized Trocar and Method of Using Same
Filed: June 9, 1998
Issued: May 2, 2000
3. US Patent – 6,447,527
Apparatus and Methods for Penetration of Tissue
Filed: November 25, 1998
Issued: September 10, 2002
4. US Patent Application 10/441,149
Continuous Gas Flow Trocar Assembly
Filed: May 17, 2003
5. US Patent Application 10/739,872
Gas Flow Trocar Arrangement
Filed: December 18, 2003
6. US Patent Application 10/776,923
PneumoSeal Trocar Arrangement
Disclosure Date: February 11, 2004

FROM : RTHOMPSONMD
04-17-2006 19:07

FAX NO. : 8634412223

Apr. 17 2006 09:43PM P1

To: Kurt Azarbarzin, Mort Collier

From: Ronald J. Thompson M.D.

Date: April 17, 2006

We agree by e-mail and scanned fax document to the change of date of the IPT and SurgQuest Assignment and License Agreement to April 14, 2006.

Jack B. Stubbs 4/17/06

Jack B. Stubbs

Ronald J. Thompson 4/17/2006

Ronald J. Thompson M.D.

04-17-2006 19:07 BRYSTIN 9377868798

PAGE1